IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13329 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

OIL NATURAL GAS CORP. LABOUR UNION

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 13329 of 2003

MR TR MISHRA for Petitioner No. 1

MR SAMIR J DAVE for Respondent No. 1

RULE SERVED for Respondent No. 2,4-6

MR AJAY R MEHTA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 17/03/2004

ORAL JUDGEMENT

With the consent of the parties, the matter is

taken up for final hearing. The only question involved in this petition is whether the Government is justifying in declining the reference on the ground which is mentioned in the impugned order.

2. The short facts of the case are that the petitioner is a registered Union and it is the case of the petitioner that its members are employees of the contractors of ONGC. The dispute was raised by submitting chartered of demand by the petitioner Union for a declaration that the workmen are employees of ONGC and the contract be declared as sham, bogus and camouflage. It appears that thereafter, as per the petitioner, detailed representation for justifying the chartered of demand dated 3.6.2003 was submitted, copy whereof is produced at Annexure-B. The competent officer of the appropriate Government ultimately has passed the order on 16.4.2003 whereby the reference is declined on the ground that the Union could not produce documentary evidence in support of their contention and that the management of ONGC was registered for engaging contract workmen, and the contractors under whom these workmen were engaged were holding licence for engaging the contract workmen. The said order of appropriate government is under challenge in this petition.

3. Mr. Mishra, the learned counsel appearing for the petitioner submitted that the details of justification of chartered of demand dated 3.6.2002 was submitted, copy whereof is produced at Annexure-B. However, the competent officer of the appropriate Government has not at all considered the same and has declined the reference on the ground that no documentary evidence is produced in support of the contention. Mr. Mishra also submitted that it can be said that the appropriate Government has examined merit and demerit of the dispute raised by the petitioner which cannot be examined while considering the matter for referring to the Industrial Forum. He, therefore, submitted that the order has been passed without properly considering the material on record and it was a case for making reference and since the same is not made, the order deserves to be quashed and the matter deserves to be remanded to the appropriate Government for reconsidering the same.

4. On behalf of the respondent No.1 Mr. Samir Dave, the Additional Central Government Standing Counsel, Central Government has supported the order and Mr. Mehta appearing for respondent No.3 has submitted that there is no authenticated material to show that such justification (Annexure-B) was there on record. He also submitted that

if there is a failure on the part of the petitioner to produce the necessary documents it cannot be said that the officer was not justified in rejecting the reference. So far as the other respondents are concerned, they have chosen not to appear though they are served, as per Mr.Mishra.

5. There is no dispute on the point that the members of the petitioner Union on whose behalf the chartered of demand was submitted are employed or engaged by the contractors of ONGC. However, the basis of the chartered of demand is that the contract is a sham, bogus and camouflage and therefore the dispute was raised for declaring the concerned workmen as of ONGC for all purposes and for declaring the contract as sham, bogus and camouflage. The petitioner in support of chartered of demand had made detailed submissions for justifying the chartered of demand. However, it appears that the concerned officer of the Central Government has not considered the same and he has considered the matter as if the contentions of the petitioner cannot be accepted unless and until the documentary evidence are produced. As such, whether the demand made in the charter is to be allowed or not would be a question which the Industrial Forum will have to examine and so far as the power of the appropriate Government of making reference is concerned, it is well settled that such powers are having administrative character and the appropriate Government has not to examine the merit and demerit of the demand. If such a criteria is considered, it appears that the ground mentioned for rejecting the reference cannot be sustained in eye of law. As such, it was for the appropriate government to examine as to whether the dispute exist or not, and therefore, the matter could be considered by the authority accordingly.

6. In this context, the reference may be made to the decision of this Court (Coram: R.K.Abichandani and K.M.Mehta,JJ) dated 10.11.2003 in case of Manubhai B Makwana v. Union of India, in LPA 1031 of 1996 in SCA 4230 of 1996. In the said decision, at para 6.1 and 6.2 the Division Bench observed as under:

> "6.1 Thus, though the appropriate government is not precluded from considering, prima facie, existence of the disputes when it decides the question as to whether its power to make reference should be exercised under Section 10 read with Section 12(5) of the Act, it cannot purport to reach final conclusions in cases where there are disputed questions of fact.

6.2 In the present case, it is evident from the proceedings before the conciliation officer that there was an acute dispute about the period for which the workman had served. On one hand, the workman contended that he had worked for more than 2500 days, while on the other, the employer Dena Bank denied that assertion contending that he had not put in even 240 days of service in a year. This was not a case where the claim put up was patently frivolous. It was a case where the appellant was already on the badli panel and he had intermittently worked even according to the petitioner. Therefore, the bank had sufficient material to show the actual number of days the workman had put in during the entire period from November 1985 to July 1994. Therefore, there is no substance in the contention raised on behalf of the bank that the government was justified in holding that the workman had not put in 240 days of service in a year."

In the present case also it appears that the officer concerned of the appropriate government has not considered the scope and ambit of the power of the appropriate government while considering the matter for making reference and the reference has been rejected on the ground that the supporting documents are not produced or that since ONGC was registered for engaging contract workmen and the contractors were holding licence, the reference is declined. As such, such aspects even if considered, the same shows that the concerned officer of the appropriate government has not examined as to whether the dispute exist or not and the same is genuine dispute or not without considering the merit and demerit of the case of both the sides. Further, in any case, the order suffers from non-application of mind because the justification made by the Union is neither referred nor considered. Under the circumstances, the order passed by the appropriate government dated 16.4.2003 cannot be sustained in eye of law and the matter deserves to be reconsidered by the appropriate government for considering the matter for referring the dispute or otherwise.

7. In view of the aforesaid discussion, the order dated 16.4.2003 passed by the Government, copy whereof is produced at Annexure-C is quashed and set aside with the further direction that the matter shall be reconsidered in light of the observations made by this Court hereinabove and other aspects which may be raised by both

the sides, and in accordance of law. The appropriate government shall decide the matter within a period of three months from the receipt of the order of this Court.

8. Petition allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, no cost.

9. Direct service permitted through Speed Post in addition to normal service.

(Jayant Patel,J)

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